Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

NO. 79-332

DUANE MEDDOWS,

Petitioner,

v.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIFTH DISTRICT

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OPINION BELOW

The opinion of the Appellate Court of Illinois, Fifth Judicial District, is reported at 67 Ill.App.3d 995, 385 N.E.2d 765, 24 Ill. Dec. 624 (1978).

JURISDICTION

The petitioner invokes jurisdiction pursuant to 28 U.S.C. 1257. The respondents submit that jurisdiction is lacking for the reasons set forth in Argument I.

CONSTITUTIONAL PROVISIONS

Petitioner relies on the Fifth and Fourteenth Amendments to the Constitution of the United States.

QUESTIONS PRESENTED

I. Whether review of the decision of the Appellate Court of Illinois is premature because the finality requirement of 28 U.S.C. 1257 has not been met.

II. Whether the Illinois Appellate Court correctly reversed the trial court's suppression of statements and evidence seized from the petitioner where there was no custodial interrogation prior to informing petitioner of his rights under *Miranda* and where the evidence seized has not been come at by exploitation of any illegality.

STATEMENT OF THE CASE

Petitioner was charged by indictment with the August 27, 1975 dynamite murder of his father, Cletus Meddows (R. C4). Petitioner filed a motion to suppress confession under chapter 38, section 114-11 of the Illinois Revised Statutes, in which he alleged *inter alia* that his confession was involuntary, that it was given in the absence of the proper admonishments, and that it was induced by promises, physical coercion, and violence (R. C7). Subsequently, petitioner filed three motions to suppress physical evidence, to-wit: dynamite and other blasting paraphernalia discovered in his car and trailer, on the ground that these items were seized in violation of his rights under the Fourth Amendment (R. C8-C12). Specifically, petitioner alleged that his consent to the search was involuntary (*Id.*).

The cause was called for a hearing solely on the motion to suppress confession (R. 7, 9, 121). At this hearing, the State called two witnesses: David True, a Special Agent with the Bureau of Alcohol, Tobacco, and Firearms of the United States Treasury Department (R. 11), and William Hopkins, a St. Clair County Sheriff's Deputy (R. 34). The substance of their testimony was as follows:

In the course of their investigation of the dynamite death of Cletus Meddows, the officers learned a number of things which led them to suspect the petitioner. The petitioner worked for Peabody Coal as a blaster at the Pittsfield Mine (R. 22, 39-40). The fuses and dynamite which killed Cletus Meddows were of the type used by Peabody Coal (R. 23, 41). Petitioner was only one of three people at the mine with access to the dynamite (R. 41). Petitioner was present at the scene of the explosion in which his father was killed (R. 66).

It was with these facts in mind that the officers ap-

proached the petitioner at the funeral home about 1:45 p.m. on August 29, 1975 (R. 11-2). They asked the petitioner if he would go with them to the Sheriff's Department to talk to them (R. 14). They explained to the petitioner that he did not have to go with them (R. 19), and that they would take him back to the funeral home after the questioning (R. 49). The petitioner, who was "very voluntary about the whole affair" (R. 19), agreed to accompany the officers, who drove him to the Sheriff's Department (R. 14).

The officers asked the petitioner general questions about his background for about an hour (R. 12, 35). During this time the petitioner talked freely and answered questions without any hesitation (R. 25). Prior to asking the defendant questions about the incident under investigation, the officers advised the petitioner of his rights (R. 17, 35). The petitioner was advised of his rights at 3:15 p.m. (R. 27). Deputy Hopkins read a standard waiver form to the petitioner, and then asked the petitioner to read it himself (R. 13). The petitioner, who had completed the eighth grade and who could read and write, stated that he understood the form, and signed it (R. 13, C126, People's Exhibit 1). The officers made no promises to the petitioner, and used neither physical force nor the threat of physical force in questioning him (R. 36).

At this time, petitioner was not under arrest and was free to leave (R. 20). The petitioner denied that he was responsible for the death of his father (R. 31-2). However, some time between 3:30 p.m. and 4:30 p.m. the petitioner admitted stealing dynamite from the mine (R. 61-2). It was at this point that petitioner was placed under arrest and was no longer free to leave (*Id.*). The officers obtained petitioner's consent to search his automobile and bedroom (R. 43, 46, 49).

In a written order, the court granted petitioner's motion to suppress statement (R. 13). The court further ordered the

suppression of the items seized from the petitioner's car, because the information upon the basis of which the officers obtained a search warrant for the car was acquired from the petitioner prior to the time they advised him of his *Miranda* rights (R. C13). The court found that the petitioner was in custody during the entire time he was questioned at the Sheriff's Department (R. C14).

The People filed a Notice of Appeal from the order suppressing physical evidence and suppressing statements made by the defendant (R. C16). The Appellate Court of Illinois reversed the order of the Circuit Court of St. Clair County in an opinion rendered on December 28, 1978. *People* v. *Meddows,* 67 Ill.App.3d 995, 385 N.E.2d 765 (1978). The petitioner filed a petition for leave to appeal to the Illinois Supreme Court, which was denied on May 31, 1979. The petitioner has not yet been brought to trial for the offense of which he stands charged.

REASONS WHY THE WRIT SHOULD BE DENIED

I. The Jurisdictional Requirement Of Finality Of Judgment Has Not Been Met.

Petitioner has invoked jurisdiction to this Court pursuant to 28 U.S.C. 1257. The first jurisdictional predicate of § 1257, in all of its manifestations, is that there be a "final" judgment or decree by the highest state court respecting the federal question. In the instant matter, the petitioner is seeking this court to review the Illinois Appellate Court's reversal of a suppression order in a criminal case. The case has not proceeded to trial and as such the petitioner does not stand convicted of any offense.

It has long been established that the final judgment in a criminal proceeding is the sentence. *Berman* v. *United States,* 302 U.S. 211, 212, 58 S.Ct. 154 (1937); *Parr* v. *United States,* 351 U.S. 513, 518, 76 S.Ct. 912 (1955). Therefore, a state court judgment which merely disposes of a motion relating to the admission of evidence lacks the finality necessary to support review by this Court. In *Chapman* v. *California,* 405 U.S. 1020, 92 S.Ct. 1284 (1972) this Court denied certiorari in a case very similar to the one at bar. In *Chapman,* the trial court ordered that certain items of evidence be suppressed. The Appellate Department of the Superior Court affirmed the suppression of various items. The state appealed this suppression and the Court of Appeals reversed. The California Supreme Court denied a hearing on the matters and certiorari was sought in this Court. The petition for certiorari was denied, "it appearing that the state court decision is not final. . . ." 405 U.S. at 1020. See also *Wilson* v. *Schnettler,* 365 U.S. 381, 384-385, 81 S.Ct. 632, 635 (1961).

It has long been the practice of this Court to avoid

rendering unnecessary judgments. In the instant case this practice is solidified by notions of both comity and judicial economy. The instant proceeding in the Illinois trial court is at its embryonic stage. Should the petitioner proceed with his trial and be acquitted there will be no further need for appellate review. Should the trial proceed and result in a conviction the petitioner has available to him an appeal as a matter of right in the Illinois Appellate Court and the opportunity for review in the Illinois Supreme Court. Review of a motion to suppress evidence at this stage of the criminal justice proceedings would only further delay the petitioner's right and the state's right to bring this matter to a conclusion. Because the jurisdictional requirement of finality of judgment pursuant to 28 U.S.C. 1257 has not been met the writ should be denied.

II. The Illinois Appellate Court Correctly Reversed The Trial Court's Suppression Of Statements And Evidence Where There Was No Custodial Interrogation Prior To Informing Petitioner Of His Rights Under *Miranda* And Where The Evidence Seized Has Not Been Come At By Exploitation Of Any Illegality.

In reversing the trial court, the Illinois Appellate Court did not reach the issue presented by the petitioner that he had been subjected to custodial interrogation without being advised of his rights under *Miranda* v. *Arizona* (384 U.S. 436, 86 S.Ct. 1602 (1966)). The Appellate Court held that even assuming *arguendo* that the interrogation was custodial, that the suppression of the evidence in question was not warranted since it was not "come at by exploitation of" the prior questioning. Respondent is in agreement with this opinion yet further states that there was no custodial interrogation prior to the *Miranda* admonishments.

The law is well settled that one must be informed of his *Miranda* rights only before law enforcement officers initiate a custodial interrogation. *Oregon* v. *Mathiason,* 429 U.S. 492, 495, 97 S.Ct. 711, 714 (1977). In *Miranda,* this Court defined "custodial interrogation" as:

> . . . [Q]uestioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom in any way. 384 U.S. 436, 444, 86 S.Ct. 1602, 1612 (1966).

In the instant case, the trial court ordered the suppression of "statements" obtained from the petitioner. The record, however, reflects that the petitioner made only a single incriminating remark, to-wit: his admission that he stole dynamite from the mine (R. 62). This statement came after the petitioner had been thoroughly advised of his rights. (R. 13, 62-65, 126). The *Miranda* warnings were given after approximately 1½ hours of questioning by police officers. It is this delay of 1½ hours that petitioner seeks to qualify as custodial interrogation to aid in his suppression attempts. The undisputed testimony, however, clearly shows that there was not custodial interrogation prior to *Miranda* warnings.

At the suppression hearing, the following was presented: Government Agent True testified that when they met the petitioner at the funeral home, they advised him that he did not have to go with them (R. 19). Deputy Hopkins testified that they probably advised the petitioner that they would bring him back when they were finished questioning him (R. 49). Agent True testified that when they asked the petitioner to go with them to the Sheriff's Department, the petitioner was "quite voluntary." (R. 14). True also testified that at the time the petitioner was advised of his rights that he was not under arrest and was free to leave (R. 20). The petitioner did not testify at the suppression hearing, thus there was no evidence presented that during the initial questioning the petitioner was in custody, or even that he believed himself to be in custody.

In *Oregon* v. *Mathiason,* 469 U.S. 492, 97 S.Ct. 711, 714 (1977) this Court found that *Miranda* warnings were not required to be given before the interrogation of Mathiason since he was not in custody "or otherwise deprived of his freedom of action in any significant way." This Court concluded that there was no indication that the questioning took place in a context where the defendant's freedom to depart was restricted in any way, emphasizing that the defendant appeared at the police station voluntarily, that he was informed he was not under arrest, and that he was permitted to leave. This Court further declared:

> ". . . [P]olice officers are not required to administer *Miranda* warnings to everyone that they question. Nor is the requirement of warnings to be imposed simply because the questioning takes place in the station house, or because the questioned person is the one whom the police suspect. *Miranda* warnings are required only where there has been a restriction on a person's freedom as to render him 'in custody.'" (429 U.S. at 495, 97 S.Ct. at 714).

Thus it is clear, based upon the record in this case, that the trial court was in error in suppressing the statements made. Furthermore, anything said prior to the giving of the *Miranda* warnings was properly admissible into evidence as the petitioner was not in custody. It follows logically that because there was no custodial interrogation, that consequently the officers were entitled to utilize any information which the petitioner gave them during that period. It is for these reasons that the trial court erred in suppressing the evidence later seized.

Even assuming *arguendo,* that the petitioner was in custody prior to being informed of his *Miranda* rights, the appellate court was still correct in reversing the suppression order. The trial court, while finding that the petitioner was subject to custodial interrogation from the beginning,

did not base its exclusion of evidence on the alleged *Miranda* violation. Rather the court excluded the items seized as fruits of the questioning which took place prior to the *Miranda* warnings, pursuant to the "fruit of the poisonous tree doctrine" of *Wong Sun* v. *United States,* 371 U.S. 471, 83 S.Ct. 407 (1963). The appellate court properly ruled, however, that even assuming that the interrogation was custodial the suppression of the evidence in question was error since the evidence was not "come at by exploitation" of the prior questioning.

The items suppressed by the trial court were dynamite and blasting paraphernalia which were discovered in the petitioner's car and trailer. These items were recovered by police after the petitioner consented to a search of his car. (R. 43, 49). The petitioner contends, however, that information which led the police to obtain this consent was acquired during the period of illegal custodial interrogation. The record, however, reflects that this is not the case.

Prior to questioning the petitioner the officers knew that he worked for Peabody Coal at the Pittsfield Mine as a blaster (R. 22-3, 39-40). They knew that petitioner was one of only three people at the mine with access to the dynamite (R. 41). They knew that the fuses and dynamite which blew up Cletus Meddows were of the type used by Peabody Coal (R. 23). They had been told that the petitioner was with his father at the time of the explosion (R. 23, 66). Deputy Hopkins was previously aware that petitioner owned a car of a certain type (R. 52). Hopkins had seen the car both at the petitioner's trailer and at the hospital on the morning of the death of petitioner's father (R. 57-8). Hopkins had also received information that an automobile was observed at the scene of the crime the night before the explosion (R. 53).

Thus, there is nothing in the record to support the court's finding that the search of the petitioner's car was prompted

by what the officers learned from the petitioner prior to the time they advised him of his rights (R. C13). During the initial questioning period, the police verified this information already in their possession (R. 12, 35).

The appellate court correctly held that under the facts of this case, that the fruit of the poisonous tree doctrine is inappropriate. In *Wong Sun,* this Court declared that the exclusionary rule has no application when the government learned of the evidence from an independent source. 371 U.S. at 487, 83 S.Ct. at 417. See also, *Silverthrone Lumber Co.* v. *United States,* 251 U.S. 385, 392, 40 S.Ct. 182, 183 (1920). In view of the fact that the officers knew prior to any questioning that the petitioner was employed as a dynamite shooter, that a car was observed near the scene of the murder the night before the explosion and that the petitioner owned a car, it is highly likely that they would have sought, after advising petitioner of his rights, consent to search his car. This would have most likely occurred regardless of petitioner's answers to the preliminary questions. This would have occurred independent of any information obtained from the petitioner.

Furthermore, as the appellate court noted, the questioning of the petitioner prior to his admonition of his rights was of such a routine nature, that his answers were incapable of being exploited in the manner suggested. Lastly, the petitioner was scrupulously admonished of his rights prior to his admission and prior to his consent to search was given. Viewing all of the factors involved in this case there is only a tenuous link between the questioning which took place prior to the *Miranda* warnings and the evidence later suppressed.

As this Court has stated on many occasions, the primary purpose of the exclusionary rule, if not the sole purpose, is to deter future unlawful police conduct. *Michigan* v. *Tucker,* 417 U.S. 433, 447, 94 S.Ct. 2357, 2365 (1974).

Under the facts of this case the exclusionary rule and the policy behind it is inapplicable. The Illinois Appellate Court properly applied the applicable federal constitutional standards to the facts in this case and for the reasons stated the writ should be denied.

CONCLUSION

For the reasons stated herein, respondent respectfully requests that the petition for writ of certiorari be denied.

Respectfully submitted,

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